MICHIGAN SUPREME COURT

Office of Public Information

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FOR IMMEDIATE RELEASE

MICHIGAN SUPREME COURT TO HEAR FIRST ORAL ARGUMENTS IN HALL OF JUSTICE TOMORROW

LANSING, MI, November 18, 2002 – The case of a woman charged with the murder of her seven-year-old daughter will be the first case the Michigan Supreme Court will hear tomorrow, in the first oral arguments the Court will hold in the Michigan Hall of Justice.

The issue in *People* v. *Yost* is whether probable cause exists to try the defendant for murder. The defense argues that the child, who died of a medication overdose, ingested the pills herself, and that there is no probable cause to believe that the mother killed the girl.

Also before the Court is a criminal sexual conduct case, *People* v. *Perkins*. At issue is whether the defendant coerced a 16-year-old girl into having a sexual encounter with him. The complainant testified that she viewed the defendant as a surrogate father and that he used that position of authority to have sex with her. The Court will also hear the case of a woman who claims her employer discriminated against her because of her pregnancies. The Court will hear 11 other cases, including worker's compensation, criminal, defamation, and insurance matters.

Court will be held **November 19, 20 and 21** in the Supreme Court Room on the sixth floor of the Michigan Hall of Justice. Court will convene at **9:30 a.m.** each day.

(*Please note: The summaries that follow are brief accounts of complicated cases and might not reflect the way in which some or all of the Court's seven Justices view the cases. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of their cases. For further details about these cases, please contact the attorneys*.)

Tuesday, November 19

Morning session

PEOPLE v. YOST (case no. 119889)
Attorney for defendant Donna Alice Yost: Edward M. Czuprynski/989.894.1155
Prosecuting attorney: Martha G. Mettee/989.895.4185

Attorneys for amicus curiae Dennis Richardson: Juan A. Mateo, Gerald K. Evelyn/313.962.3500
Attorney for amicus curiae Prosecuting Attorneys Association of Michigan: Janice M. Joyce Bartee/313.833.4371
At issue: Was there probable cause to try defendant for the murder of her seven-year-old daughter, who died of a medication overdose?
Background: On October 10, 1999, seven-year-old Monique Yost died of an overdose of imipramine, a medication prescribed for the child because of bedwetting. It was estimated that she had ingested about 90-100 pills. Monique's mother, Donna Alice Yost, was charged with open murder and felony murder. The prosecution's theory was that Yost dissolved the pills and put them into a liquid for Monique to drink. The defense argued that Monique ingested the pills herself, possibly to commit suicide. Both the prosecutor and the defense presented expert testimony at the preliminary hearing to support their respective views of the case; one of the prosecution's experts testified that it was very rare for young children to commit suicide. At the preliminary hearing, District Court Judge John C. Leaming found that there was no probable cause to believe that a murder had been committed. Accordingly, the judge refused to bind Yost over for trial. Bay County Circuit Judge William J. Caprathe reversed. He found that there was abundant circumstantial evidence supporting a finding of probable cause that Monique's death was a homicide and that Yost killed her. The judge noted in part that Yost had been alone with Monique the day that the child ingested the medication, and that Yost was angry with Monique and was punishing her during the time they were alone together. Yost appealed; the Michigan Court of Appeals declined to review the case. Yost now appeals to the Michigan Supreme Court.

BLAKEWOODS SURGERY CENTER, ET AL. v. MICHIGAN INSURANCE COMMISSIONER (case no. 118935)
Attorney for plaintiffs: Linda S. Fausey/517.484.8545
Attorneys for defendant: Thomas L. Casey, Larry F. Brya/517.373.1160
Attorneys for amicus curiae Blue Cross Blue Shield of Michigan: John P. Jacobs/313.965.1900, Joseph W. Murray/313.225.7830
At issue: The plaintiffs, who own a surgery clinic, claim Blue Cross Blue Shield of Michigan violated state law by denying the clinic's application to be a participating care provider. Where the state insurance commissioner is reviewing the insurer's provider class plan, is there an actual controversy that a court can hear, or is the plaintiffs' proper remedy the administrative process involved in the review?
Background: The plaintiffs, a group of physicians, own an outpatient surgery clinic in Jackson. The plaintiffs applied to enter into a participating care provider agreement with Blue Cross Blue Shield of Michigan (BCBSM), but BCBSM denied their application. BCBSM stated that the surgery clinic had failed to establish "evidence of need" for the clinic's services in the Jackson area. The plaintiffs sued the insurance commissioner, arguing that BCBSM violated the Nonprofit Health Care Corporation Reform Act and discriminated against their clinic because it is not a hospital. The act provides that "A health care corporation shall not deny participation to a freestanding surgical outpatient facility on the basis of ownership if the facility meets the reasonable standards set by the health care corporation for similar facilities, is licensed under part

208 of the public health code ... and complies with part 222 of the public health code ....” The plaintiffs claimed that, at about the time BCBSM denied their clinic’s application, BCBSM gave provider status to an expansion of Foote Hospital for similar ambulatory surgery. The insurance commissioner should order BCBSM to stop using an “evidence of need” standard, but had failed to do so, the plaintiffs contended. The insurance commissioner moved for dismissal of the case. In an affidavit, the commissioner said he would review BCBSM’s ambulatory surgery facilities provider class plan. Ingham County Circuit Judge Michael Harrison granted the motion and dismissed the case. The judge said the court lacked jurisdiction because there was no actual controversy pending. He added that the plaintiffs’ remedy was to become involved in the commissioners’ review process. In an unpublished opinion, the Court of Appeals affirmed, agreeing that there was no actual controversy and that the plaintiffs had an adequate administrative remedy. The plaintiffs appeal.

AUTO-OWNERS INSURANCE COMPANY v. AMOCO PRODUCTION COMPANY (case nos. 119403, 119410)

Attorney for plaintiff Auto-Owners Insurance Company: Martin L. Critchell/313.961.8690
Attorneys for defendant Amoco Production Company: Jack L. Hoffman/616.459.7100, Daniel J. Bebble/989.732.7536
Attorney for amicus curiae Auto Club Insurance Association: John A. Lydick/248.646.5255
At issue: The plaintiff insurance company paid for a worker’s medical expenses after he was injured in the workplace. Must the worker’s employer reimburse the insurance company for the full amount of medical expenses? The plaintiff paid more in medical expenses than a worker's compensation carrier would have had to provide under the worker’s compensation statute.
Background: Amoco employee Leroy Smithingell was injured in an accident involving his motor vehicle when he arrived for work on January 30, 1994. Amoco’s worker’s compensation insurer denied that the accident was work-related, and refused to pay benefits. Smithingell then filed a claim with Auto-Owners Insurance, his no-fault automobile insurer, which paid his no-fault benefits, including wage-loss and medical expenses. Auto-Owners then filed a petition before a worker’s compensation magistrate, seeking reimbursement from Amoco. The magistrate agreed with Amoco that Smithingell's injury arose out of and in the course of his employment, but added that Auto-Owners was not entitled to recover from Amoco the no-fault wage-loss benefits Auto-Owners paid to Smithingell. Auto-Owners was entitled to be reimbursed by Amoco for medical expenses, but the reimbursement was subject to the fee schedule established by the Worker’s Disability Compensation Act (WDCA). The WDCA sets limits on the amount of medical expenses that a worker’s compensation carrier must pay, the magistrate said. Auto-Owners paid more in medical expenses than a worker’s compensation carrier would have been required to pay. The magistrate ruled that Auto-Owners would not be reimbursed for the full amount of medical benefits, but only for that amount that a worker’s compensation carrier would have paid. The Worker’s Compensation Appellate Commission affirmed on appeal. Ultimately, the Court of Appeals ruled that the WDCA, which requires an employer to reimburse an employee for reasonable medical expenses the employee paid for a work-related injury, does not authorize full reimbursement to the no-fault insurer. Auto-Owners appeals.

Afternoon session

SNIECINSKI v. BLUE CROSS AND BLUE SHIELD OF MICHIGAN (case no. 119407)
Attorney for plaintiff Marcia Sniecinski: Mandel I. Allweil/989.790.3222
Attorney for Blue Cross and Blue Shield of Michigan: Bart M. Feinbaum/313.225.0849
Attorney for amicus curiae Michigan Chamber of Commerce: Diane M.Soubly/248.540.8019
Attorneys for amicus curiae Automobile Club and Daimler Chrysler Corporation: Thomas G. Kienbaum, Theodore R. Opperwall, Noel D. Massie/248.645.0000
Attorney for amicus curiae Michigan Manufacturers Association: Frederick R. Damm/313.965.8241
At issue: The plaintiff, a woman who claims she was discharged and not rehired by her employer because of her pregnancies, was awarded $351,000 by a jury. On appeal, one issue is whether the plaintiff established a causal connection between a supervisor's comments about her pregnancies and her employer's actions about her job.
Background: Marcia Sniecinski, an account executive for Blue Care Network of Eastern Michigan and later an employee of Blue Cross and Blue Shield of Michigan (BCBSM), had three difficult pregnancies between 1989 and 1994. According to Sniecinski, her supervisor seemed upset by her pregnancies and made negative comments about their impact on her attendance at work. During her third pregnancy, Sniecinski was off work from September 1993 through May 1994. Her employment was administratively terminated. A job that she had been offered and had accepted was not available to Sniecinski upon her return to work because of a hiring freeze, managers told her. She returned to a different position in 1994. Two years later, she applied for an account executive position, but the job requirements had been revised to include a college degree, which Sniecinski did not have. After BCBSM refused to waive the degree requirement for Sniecinski, she voluntarily quit her job as of September 20, 1996, and began taking college classes. She sued her employer in Wayne County Circuit Court, alleging that BCBSM discriminated against her because of her gender, discharging her and declining to rehire her because of her frequent pregnancies. At trial, a jury returned a verdict in favor of Sniecinski, awarding her $125,000 for past economic loss, $136,000 for future economic loss and $90,000 for non-economic loss. A judgment in the total amount of $351,000 was entered by Wayne County Circuit Judge Marianne O. Battani on April 16, 1998. The judge denied BCBSM's defendant's motion for judgment notwithstanding the verdict, new trial, and remittitur (reduced verdict). In an unpublished per curiam opinion dated March 9, 2001, the Court of Appeals affirmed. On appeal to the Michigan Supreme Court, BCBSM argues that Sniecinski failed to mitigate her loss of income because she enrolled in college "on a casual basis" instead of looking for a job. Sniecinski also failed to present sufficient evidence supporting her claim for non-economic damages, BCBSM contends. BCBSM also argues that Sniecinski did not establish a causal connection between her supervisor's statements and management decisions about her job. Finally, BCBSM claims that it would have made the same employment decisions about Sniecinski despite her pregnancies.

PITTSFIELD TOWNSHIP v. WASHTENAW COUNTY, ET AL. (case no. 119590)
Attorney for plaintiff Pittsfield Township: John L. Etter/734.769.9050
Attorneys for defendant Washtenaw County: Jerold Lax/734.761.3780, Curtis N. Hedger/734.994.2463
Attorneys for amicus curiae Michigan Association of Counties: Peter A. Cohl, Richard D. McNulty/517.372.9000
Attorneys for amicus curiae Michigan Townships Association: John H. Bauckhman, Robert E. Thall/269.382.4500
At issue: Do local zoning ordinances apply to a county? The case is one of first impression.
Background: Washtenaw County proposed placing a homeless shelter on county-owned land in Pittsfield Township. The land is locally zoned for industrial use, which excludes residential uses such as homeless shelters. Pittsfield Township sued to prevent Washtenaw County from using the property for a homeless shelter. The county argued that it could use county property for the shelter wherever it chose, despite the township's zoning restrictions. The township sued. Washtenaw County Circuit Judge David S. Swartz ruled in favor of the county. He found that the Legislature, in enacting the state statute regarding the powers of a county board of commissioners, intended to give counties plenary authority to choose building sites, and that the county was exempt from the township's zoning ordinances. In a published opinion, the Court of Appeals reversed and remanded the case to the trial court. The statute does not say that a county is exempt from any legal restrictions in using its property, the appellate panel stated. The county appeals.

SILVER CREEK DRAIN DISTRICT v. EXTRUSIONS DIVISION, INC., ET AL. (case no. 119721)
Attorney for plaintiff Silver Creek Drain District: Mark S. Allard, Matthew Zimmerman/616.336.6000
Attorney for defendants Extrusions Division, Inc., and Azzar Store Equipment, Inc.: Douglas A. Dozeman, Christian E. Meyer/616.752.2000
Attorney for amicus curiae Ackerman & Ackerman, P.C.: Alan T. Ackerman/248.643.9550
Attorney for amicus curiae Michigan Department of Transportation: Patrick F. Isom/517.373.1479
Attorneys for amicus curiae Michigan Municipal League: Thomas C. Phillips, Clifford T. Flood, James R. Lancaster, Jr./517.487.2070
At issue: Where a judge must assess the value of property in a condemnation suit, should the cost of environmental cleanup be a factor in determining the property's value?
Background: Extrusions Division, Inc. owned a parcel of land in Grand Rapids of about eight acres, referred to as Old South Field. In 1989, Extrusions challenged its property tax assessment in part by arguing that the land's fair market value was reduced by environmental contamination. In 1990, the Silver Creek Drain District identified Old South Field as a location for a large storm water detention pond. On June 29, 1994, the drain district filed a condemnation action in Kent County Circuit Court. In its complaint, the drain district stated that it reserved its right to bring a federal or state cost recovery action regarding the release of hazardous substances on the property. On February 20, 1995, under a stipulation of the parties, Kent County Circuit Judge

Donald A. Johnston III ordered Old South Field conveyed to the drain district and ordered the drain district to pay Extrusions $211,300 for the taking. Ultimately, the drain district complied with that order. In a bench trial almost two years later, the circuit court judge ruled that the value of Old South Field at the time of the condemnation, without consideration of environmental cleanup costs, was $278,800. The court then found that Old South Field was an environmentally contaminated site and that a purchaser would have required clean-up of the site. Subtracting the cost of clean-up from the property's value, the judge concluded that the net fair market value of the property was $41,032. Extrusions appealed, asserting that the trial judge erred in determining the amount of just compensation. The Court of Appeals reversed. The Court found that 1993 amendments to Michigan's Uniform Condemnation Procedures Act prohibit the courts from accounting for environmental contamination when calculating just compensation due the property owner. The drain district appeals.

Wednesday, November 20

Morning session

IN RE CERTIFIED QUESTION (from the U.S. Court of Appeals for the Sixth Circuit) KENNETH HENES SPECIAL PROJECTS v. CONTINENTAL BIOMASS INDUSTRIES, INC. (case no. 120110)
Attorneys for plaintiff Kenneth Henes Special Projects: Randall J. Gillary, Kevin P. Albus/248.528.0400
Attorney for Continental Biomass Industries: J. Mark Cooney/248.355.4141
At issue: A sales representative claims that he is entitled to "double damages" under a Michigan statute that allows sales representatives to recover such damages if the principal "intentionally"fails to pay commission. Does the standard for double damages require a showing that the principal acted in bad faith?
Background: Kenneth Henes Special Projects served as the exclusive sale representative for five states, including Michigan, for Continental Biomass Industries (CBI), a New Hampshire corporation. Under the parties' agreement, CBI was to give Henes commissions on all CBI machinery sold within his territory. Henes could also qualify for a commission if CBI completed a sale to a buyer outside Henes' territory, if Henes made an authorized first contact with the buyer. The base commission was 10 percent. In 1998, CBI terminated the at-will sales representation agreement with Henes. At that time, four sales had just been completed or were about to be completed. CBI rejected Henes' claims that it owed him $135,193 in commission for those sales. Henes sued CBI in Wayne County Circuit Court; CBI removed the case to the U.S. District Court for the Eastern District of Michigan. Under Michigan's Sales Representative Commission Act (SRCA), in addition to actual damages, a sale representative may also recover, where "the principal is found to have intentionally failed to pay the commission when due, an amount equal to two times the amount of commissions due but not paid ... or $100,000, whichever is less." The case went to trial before U. S. District Judge Gerald Rosen. CBI asked the judge to instruct the jury that "Intentional failure to pay means that Defendant knew a commission was due to the Plaintiff and chose not to pay it." The judge refused to give the

instruction. The jury found that CBI owed Henes commission on all four of the sales, and that CBI had "intentionally" failed to pay three of them. CBI appealed to the U.S. Court of Appeals for the Sixth Circuit. The Sixth Circuit has asked the Michigan Supreme Court to determine whether "intentionally" means that the sales representative has to prove that CBI acted in bad faith, or whether the statute exempts CBI from paying double damages if CBI can show it acted in good faith.

PEOPLE v. CHAVIS (case no. 120112)
Prosecuting attorney: Timothy A. Baughman/313.224.5792
Attorney for defendant Jack Chavis: Richard Glanda/313.255.5262
At issue: Where the defendant truthfully reported that a crime had been committed, but made false statements about the way the crime took place, should he be convicted of making a false report of the commission of a crime?
Background: Jack Chavis called the police on April 14, 1998, saying that he had been the victim of a carjacking by four males, one of whom pointed a gun at his head. He stated that he did not know any of the perpetrators. Although the carjacking did happen, Chavis' report turned out to be false in several respects: he did know one of the carjackers, the location he gave for the incident was wrong, and none of the carjackers had a gun. He also did not report that his car was stolen while he was trying to buy drugs. In a proceeding before Wayne County Circuit Court Judge Gershwin A. Drain, Chavis was convicted of making a false report of the commission of a felony. The pertinent statute provides that "a person who intentionally makes a false report of the commission of a crime...knowing the report is false is guilty of a crime..." The Court of Appeals reversed Chavis' conviction and sentence. The statute only applies to false reports of "the *commission* of a crime," the appellate panel stated. Because the defendant's false statements did not pertain to whether the crime actually occurred, the conviction must be reversed, the court stated. The prosecution appeals, arguing that the language of the statute prohibits not only false reports that a crime was committed, but also false reports of the manner in which the crime was committed.

PEOPLE v. $1,923,235.62 IN UNITED STATES CURRENCY (case no. 120205)
Prosecuting attorney: Robert C. Williams/248.858.0656
Attorneys for claimants Megabowl, Inc., et al.: Hugh M. Davis, Cynthia Heenan/313.961.2255
Attorney for amicus curiae Wayne County Prosecutor's Office: Timothy A. Baughman/313.224.5792
At issue: Where Michigan's Criminal Enterprise Act states that "reasonable attorney fees for representation in a civil in rem action under the criminal enterprise act are not subject to forfeiture," does the provision cover only fees already paid the attorney? The claimants in this case are seeking to have some seized proceeds returned to pay their attorney to defend them. Also at issue in this case is whether the state's controlled substances statute, which does not exempt attorney fee money from seizure, bars the claimants from recovering money for attorney fees.
Background: While on parole, Joseph E. Puertas allegedly participated with another man in delivering cocaine to a paid informant six times between August and November 1997, while working at the MegaBowl Bowling Alley in Orion Township, Oakland County. Puertas was

convicted of six counts of cocaine delivery less than fifty grams, one count of conspiracy to deliver between 50 and 225 grams of cocaine, and one count of racketeering under the criminal enterprise act. (Later, his drug convictions and criminal enterprise violations were set aside by the Oakland County Circuit Court and a new trial was ordered.) The Oakland County Prosecutor's Office seized property held by his relatives and associates; the total was over $5 million. The property was believed to be the illegal proceeds of gambling and drug trafficking by Puertas. The claimants sought to have some of the seized proceeds returned, so that the claimants could pay the attorney who was defending them. They cited Michigan's criminal enterprise law, which provides that "reasonable attorney fees for representation" in a racketeering case are not subject to forfeiture. Ultimately, Oakland County Circuit Judge Nanci J. Grant ruled that the statute only allows retention of fees that were already paid to the attorney before the property was seized. The judge noted that the prosecuting attorney was also proceeding under the controlled substance act, as well as the criminal enterprise act. The controlled substance act does not provide for a defendant to retain money from seized property for attorney fees. The judge reasoned that, even if the criminal enterprise statute would allow the claimants to retain money for attorney fees, the other statute would not permit it. In a published decision, the Court of Appeals reversed, stating that the claimants were "entitled to reasonable attorney fees under the plain language of the Criminal Enterprise Act." The prosecutor appeals.

Afternoon session

SWEATT v. DEPARTMENT OF CORRECTIONS (case no. 120220)
Attorney for plaintiff Ronald G. Sweatt: James P. Harvey/313.961.7363
Attorneys for defendant Department of Corrections: Thomas L. Casey, Gerald M. Marcinkoski/248.433.1414
Attorney for amicus curiae Libner, VanLeuven, Evans, Portenga & Slater, P.C.: John A. Braden/231.722.6546
At issue: A 1996 statute provides that the Michigan Department of Corrections cannot employ a felon or anyone facing felony charges. The plaintiff, a former corrections officer who was injured in the job in 1989 and who received worker's compensation benefits following the injury, later went to prison on a felony drug conviction. Is the department liable to pay worker's compensation benefits to its former officer?
Background: Ronald Sweatt, a corrections officer, injured his right knee in December 1989 when he intervened in a fight between prisoners. The Department of Corrections paid worker's compensation to him, rather than offer him other employment, because the department had a policy that only corrections officers who were 100 percent fit for duty could return to work. In 1995, Sweatt was imprisoned in Jackson Prison after he was convicted of a felony. As provided by the Worker's Compensation Disability Act, the department suspended worker's compensation benefits while Sweatt was in prison. In 1995, the department ended its policy of requiring employees to be 100 percent fit for duty. Accordingly, Sweatt would have been eligible for reemployment if he had not been in prison. On March 25, 1996, a new law went into effect; the statute provides that the Department of Correction cannot employ anyone who has been convicted of a felony or is facing felony charges. Ultimately, Sweatt was released from prison

and did obtain work elsewhere, although he earned less than he had earned working for the department. Sweatt sought ongoing benefits. The department argued that it was not liable to pay Sweatt benefits because of his felony, which made it impossible for the department to employ him. A worker's compensation magistrate awarded benefits to Sweatt, and the award of benefits was affirmed by the Worker's Compensation Appellate Commission and the Court of Appeals. The department appeals.

STATE TREASURER v. ABBOTT, ET AL. (case no. 120803)
Attorneys for plaintiff State Treasurer: Thomas L. Casey, Daniel M. Levy/313.456.0140
Defendant Thomas K. Abbott: In pro per
At issue: Under state law, the State Treasurer may seek reimbursement from prisoners who are able to pay for their maintenance. The State Treasurer obtained a court order directing General Motors, the defendant prisoner's former employer, to pay his pension directly to his prison account. Does the order violate federal law forbidding assignment or alienation of pensions?
Background: In 1996, Thomas K. Abbott was convicted of criminal sexual conduct and was sentenced to 20-30 years in prison. He had previously retired from General Motors and was receiving a pension. He deposited the pension in a credit union account to which his wife had access. The State Treasurer sued Abbott in Clinton County Circuit Court under Michigan's State Correctional Facility Reimbursement Act. Under the act, the State Treasurer may seek reimbursement from a prisoner for incarceration costs where the prisoner is able to pay maintenance. Clinton County Circuit Judge Randy L. Tahvonen entered an order directing General Motors to pay the pension directly to Abbott's state prison account. The prison warden, as receiver, would then deposit an amount in Abbott's prison account, dividing the balance between the state and Abbott's wife. The prisoner appealed, contending that the court order violated the non-alienation provision of the Employee Retirement Income Security Act (ERISA). That provision states that "[e]ach plan shall provide that benefits provided under the plan may not be assigned or alienated." Ultimately, the Court of Appeals agreed and reversed the circuit court. The State Treasurer appeals. The Treasurer argues in part that the order directing the change of the prisoner's pension address and requiring the deposit of pension funds into his personal prison account did not constitute an assignment prohibited by ERISA.

Thursday, November 21

Morning session only

PEOPLE v. PERKINS (case nos. 120453, 120461)
Prosecuting attorney: Richard Ira Dresser/989.895.4185
Attorney for defendant Mark Drew Perkins: James M. Hammond/989.892.2531
At issue: One issue in this case is whether the defendant, a deputy sheriff in Bay County, used "coercion" in a sexual encounter with a 16-year-old girl. Michigan law provides that "[a] person is guilty of criminal sexual conduct in the first degree" if the encounter involves penetration and the perpetrator uses "force or coercion" to accomplish the penetration. The complainant testified that she viewed the defendant as a surrogate father and that he used that position of authority to

have sex with her.
Background: Mark Drew Perkins, a deputy sheriff in Bay County, was charged with first-degree criminal sexual conduct and felony firearm. During Perkins' preliminary examination, the complainant testified that Perkins had begun a sexual relationship with her when she was 12 years old. On the day of the charged crime, she was sixteen years old and had been away to Mexico on a student study program. After she returned, she agreed to meet Perkins. When she met him, he was in full uniform and in a marked patrol car. The complainant testified that, after she got in the car, she performed oral sex on him because it was something that he "expected." She admitted that the defendant did not ask her or force her to perform the oral sex, but claimed that it was a result of coercion from the defendant having "manipulated my mind" and that she was afraid to anger Perkins because he was a "father figure" to her. She also stated that she felt that Perkins, as a police officer, had authority over her. At the hearing's conclusion, the district court judge found her testimony to be "entirely believable and credible." However, the judge stated, the facts did not support a finding that Perkins committed first-degree CSC by "force or coercion." The district court dismissed the charge of first-degree CSC and the related felony firearm charge. The court, however, found probable cause that Perkins' sexual conduct amounted to misconduct in office. Bay County Circuit Judge Kenneth W. Schmidt dismissed the misconduct charge, stating that the evidence failed to establish that Perkins' sexual conduct on the date charged arose out of the performance or exercise of his official duties, or were accomplished under color of his office. The judge also affirmed the district court's dismissal of the first-degree criminal sexual conduct and felony firearm charges. In an unpublished per curiam opinion, the Court of Appeals ordered reinstatement of the criminal sexual conduct charge. Perkins appeals that ruling. The prosecutor appeals to reinstate the felony firearm and misconduct in office charges.

PEOPLE v. JONES (case no. 119818)
Prosecuting attorney: Janet M. Boes/989.790.5330
Attorney for defendant Jonathan Joe Jones: Lester O. Pollak/517.787.1830
Attorney for amicus curiae Prosecuting Attorneys Association of Michigan: Timothy A. Baughman/313.224.5792
At issue: The defense counsel asked a witness whether the sole eyewitness in the case took a polygraph test; the prosecutor later asked the eyewitness whether he passed the test. Was it error for the prosecutor to ask the question, and is a new trial required?
Background: Defendant Jonathan Joe Jones was found guilty of first-degree murder and conspiracy to commit murder, for helping stomp to death a man who took Jones' television and sold it to support a drug habit. The Michigan Court of Appeals reversed and ordered a new trial, citing prosecutorial error. The prosecution erred by asking the only eyewitness to the incident if the witness had taken and passed a polygraph test, the Court of Appeals held in an unpublished opinion. In Michigan, evidence that a witness has taken and passed a polygraph test is not admissible at trial. The prosecutor appeals, arguing that the defense attorney opened the door for introduction of the inadmissible polygraph test. The prosecution points out that the defense attorney asked a detective during cross-examination, before the eyewitness was called, whether the eyewitness had not given several versions of the incident and had taken a polygraph test. By

bringing up the polygraph, the defense attorney probably led the jury to conclude that the eyewitness had not passed the test, the prosecution argues. Therefore, the prosecution was bound to respond by asking the eyewitness about the outcome of his polygraph, the prosecution contends. The defense argues that the prosecution could have asked the judge for a curative jury instruction, rather than ask about the outcome of the polygraph. The defendant further argues that the prosecutor had no authority to compound the error of referring to the polygraph.

J&J CONSTRUCTION COMPANY v. BRICKLAYERS AND ALLIED CRAFTSMEN LOCAL 1, ET AL. (case no. 119357)

Attorneys for plaintiff J&J Construction: Daniel J. Bretz, David A. Hardesty/313.965.3700

Attorneys for Bricklayers and Allied Craftsmen Local 1 and Mark King: Mary Ellen Gurewitz, Marshall J. Widick/313.965.3464

Attorneys for amicus curiae American Civil Liberties Union Fund of Michigan: Christopher J. Peters/313.577.1147, Michael J. Steinberg, Kary L. Moss/313.578.6814

At issue: At a city council meeting, a union representative made derogatory statements about a construction company that was the low bidder on a city contract. As a result, the city council awarded the contract to another bidder. Can the construction company sue the union and its representative, or does the First Amendment shield the defendants from suit?

Background: In 1995, the city of Wayne solicited bids for the construction of the Wayne Aquatic Center; J&J Construction submitted the lowest bid for the masonry contract. Mark King, acting as business agent for Bricklayers and Allied Craftsmen Local 1, told the Wayne city council that J&J Construction performed poor-quality work and did not paid the prevailing wage. Ultimately, the council awarded the contract to another bidder. J&J Construction sued King and the union in Wayne County Circuit Court, alleging defamation and tortious interference with a business relationship or expectancy. After a five-day bench trial, Wayne County Circuit Judge Timothy M. Kenny concluded that J&J Construction had failed to prove that King's statements concerning the company's failure to pay prevailing wages were false. The judge found, however, that King's statements concerning plaintiff's quality of work and ability to do the job on time were false, and that King acted negligently in making the false statements. He also found that King represented the union at the meeting and that he made the statements in order to keep J&J Construction from getting the job. Judge Kenny held both defendants liable for defamation and tortious interference with business expectancy. On appeal, the defendants argued that they should be immune from suit, because the right to petition government should immunize any petitioner from liability for government's resulting actions. In a published opinion, the Court of Appeals reversed and remanded the case to the trial judge. The panel found that King and the union had qualified immunity from a defamation lawsuit because he made the statements to a government body. The trial judge erred by applying a negligence standard, the panel said; the defendants would be liable only if King made his statements knowing that they were false or with a reckless disregard for the truth. The Court of Appeals went on to hold that the defendants were absolutely immune from suit on the plaintiff's claim for tortious interference with business expectancy. The plaintiff appeals, arguing in part that the First Amendment does not protect one who defames a private figure.

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